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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

REICHLE, KARIN M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3761

28

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,006

Applicant(s)

SAUER, BARBARA O.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-7 and 9-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 2-3, 6-7, 9-10, 13-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaar '150.

In regard to claims 2-3, 6, 9-10, 13, and 18: See Figures 5-8, 10, and col. 3, lines 43-48, the elongated material is 28, 32, 36, the backsheet is 28, the topsheet is 32, the absorbent layer is 36, the flap sheet or pocket sheet is 48, the pleats are A, B and D, E, the pocket is defined by A, B, C, D, E, see col. 1, lines 57-60, col. 4, lines 29-35, and 60-64, col. 5, lines 36-58, i.e. the pocket is defined by the pleats between sheet 48 and liner 32, see especially col. 5, lines 44-50, and the point bonds are 58, see also col. 6, line 3.

In regard to claims 7 and 14: see Figure 2, 48 and col. 3, lines 43-44.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being obvious over Foreman in view of Igaue et al.

Applicant claims forming a multilayer material of rectangular configuration, removing portions, i.e. producing a final hourglass configuration, and forming pleats in the flap sheet

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proximate the back region. See Figures 1 and 3, column 1, lines 55-60, column 3, lines 22-55, column 5, lines 61-68, column 7, lines 1-29, column 8, lines 42-63, column 9, lines 65 et seq, column 10, line 54 - column 11, line 12, column 12, lines 21-42, column 13, lines 15-35, column 14, lines 58-62 (and thus column 7, lines 31-39 of Buell), column 15, line 11 - column 16, line 25, i.e. Foreman teaches a flap sheet 274 attached directly to the liner, see Figure 3, that can have a spacing member 77, i.e. elastic member, which is secured to the flap while the flap is pleated with the pleats disposed along pocket edge, i.e. 266, so that it is contractible and stretchable in the transverse direction of the diaper, i.e. the pleats are oriented in a longitudinal direction of the flap and article in order to provide such direction of contractibility. The Foreman patent does not teach the rectangular configuration or removing portions, i.e. forming an hourglass configuration, steps. However, see column 3, line 60-col. 4, lines 12 and Figures 7-8 of Igaue et al. To employ a rectangular material which has a portion removed to create a final hourglass shape as taught by Igaue et al on the Reynolds device would have been obvious to one of ordinary skill in the art in view of the recognition that such would provide more efficient manufacture, i.e. easier to align rolls of material and shape than align already shaped material, and the desirability of efficiency in manufacture of any article. In so doing, upon definition and identification of the portion of the material which is the rear portion, i.e. removing portions, attachment of tabs steps etc, the pleats in the flap sheet are necessarily "formed" in the region they are proximately attached to, i.e. the rear portion, whether the flap sheet is pleated prior to or after the removing step. The claims do not require pleating an unpleated flap sheet after the removing the portions step.

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5. Claims 4-5 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar '150 in view of Foreman '677.

See 48, 30, 32 and 36 in Figure 2 of Schaar. Also see col. 3, lines 43-50 of Schaar. Applicant claims at least one of the flap sheet, backsheet and liner or flap sheet of nonwoven material which Schaar does not specifically set forth. However see Foreman col. 7, lines 1-22. To employ a nonwoven as taught by Foreman on the Schaar device as the liner, and thereby also the flap, would be obvious to one of ordinary skill in the art in view of the recognition that such are known as suitable liquid pervious materials for topsheets and the desire of Schaar to employ a topsheet of liquid pervious material.

Response to Arguments

6. Applicant's remarks with respect to the informalities and the 102 rejection based on Reynolds have been carefully considered but are deemed moot in that the issues discussed have not be reraised. Specifically with regard to the prior art rejection based on Reynolds et al while Reynolds teaches a sheet directly connected to a bodyside liner, see Figure 11, it does not appear such liner is liquid permeable as claimed, see for instance paragraph 59. With regard to Applicants arguments with respect to the rejections based on Schaar Applicants remarks are deemed narrower than the claim language and the teachings of the prior art, see prior art rejection supra, i.e. the prior art teaches the the flap 48 is retained only at the spots 56 and/or 58 and that therebetween the flap is permitted to gap away or expand away from the underlying surface to form a pocket, see col. 5, lines 47-55 and col. 6, line 3 of Schaar again and it is also noted that the claims do not require any specific amount of the pocket edge to expand. With

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regard to the Applicants remarks with respect to the rejections based on Foreman, it is noted that there does not appear to be any statement on the record that the Examiner considered the rejection to be inapplicable as compared to another rejection, i.e. one based on the Reynolds publication, being more applicable, i.e. the Examiner is not required to present every possible rejection based on the prior art. Also Applicant's remarks are narrower than the teachings of Foreman and the claim language, i.e. it is noted that the claim language does not require the pleats be formed at the side edges of the sheet or only thereat, that there are only two pleats, that there is only one pocket and that that one pocket extends from a pleat at one side edge to a pleat at the other side edge of the flap. There is at least one pleat on one side of the longitudinal centerline and at least one pleat on the other side, i.e. pleats can be all along the free edge of the flap 266 in combination with elastic or in lieu thereof, as disclosed by Foreman, and thus Buell, and there is a pocket whose sides are defined by such pleats, i.e. the pleats of Foreman define at least one pocket between the furthest apart pleats.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
March 30, 2004